

(22,339.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 718.

THE PEOPLE OF PORTO RICO, APPELLANT,

vs.

MANUEL ROSALY Y CASTILLO.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

INDEX.

| | Original. | Print |
|---|-----------|-------|
| Proceedings from district court of Ponce..... | 1 | 1 |
| Caption | 1 | 1 |
| Complaint..... | 2 | 1 |
| Demurrer | 4 | 2 |
| Order overruling demurrer | 5 | 3 |
| Answer..... | 6 | 3 |
| Entry of default | 8 | 5 |
| Opinion | 9 | 5 |
| Judgment | 10 | 5 |
| Appeal | 11 | 6 |
| Statement of facts..... | 12 | 6 |
| Certificate from the registry of property of Ponce..... | 12 | 7 |
| Testimony of Manuel Rosaly..... | 16 | 10 |
| José Pontón | 17 | 11 |
| Adolfo Lespier..... | 18 | 11 |
| Offer by defendant refused | 18 | 12 |
| Approval of statement of facts | 19 | 12 |
| Filing entry..... | 20 | 13 |
| Stipulation and certification of attorneys..... | 20 | 13 |

| | Original. | Print |
|---|-----------|-------|
| Opinion | 21 | 13 |
| Judgment | 27 | 17 |
| Dissenting opinion of Macleary, J. | 28 | 18 |
| Appeal | 44 | 28 |
| Order allowing appeal | 45 | 28 |
| Assignment of errors | 46 | 29 |
| Deposit in lieu of bond on appeal | 47 | 29 |
| Order approving deposit in lieu of bond | 48 | 30 |
| Motion for extension of time to file record on appeal | 49 | 30 |
| Order for extension of time to file record on appeal | 50 | 31 |
| Translator's certificate | 51 | 31 |
| Citation and service | 52 | 31 |
| Clerk's certificate | 54 | 32 |

1 *Transcript of Record.*

No. 840.

MANUEL ROSALY CASTILLO

VS.

THE PEOPLE OF PORTO RICO, ADOLFO LESPIER and GERÓNIMO SANCHEZ.

2 *Transcript of Record.*

In the Supreme Court of Porto Rico.

No. 840.

MANUEL ROSALY CASTILLO

VS.

THE PEOPLE OF PORTO RICO, ADOLFO LESPIER and GERÓNIMO SANCHEZ.

Action to Recover Possession.

Complaint.

The plaintiff, Manuel Rosaly y Castillo, of legal age, property-owner, a resident of Ponce, through his counsel, Attorney José Tous Soto, complains and alleges:

I.

That he is the owner in fee simple, with dominion title recorded in the Registry of Property of Ponce, on Folio 110, Book 120, of said Municipality, Estate 4437, triplicate, Record 6, of the following real property:

"A tract of land situated in Barrio Real, Municipality of Ponce, at the place known as 'Agustinillo,' consisting of 24-cuerdas (7-hectares, 86-ares, and 8 centares),—bounded on the North by lands belonging to Adolfo Lespier and Marcelina Rodriguez; on the South by lands of Manuel Rosaly and estate of Simón León; on the East by those of Juan Colón; and on the West by lands of José Pontón."

II.

That The People of Porto Rico, through the Collector of Internal Revenues of the City of Ponce, levied an attachment on said property, as belonging to Adolfo Lespier, for the purpose of securing the payment of sums due by the latter as surety for Manuel Figueroa Peña and for the recovery of outstanding taxes, amounting to \$1,900.70; and as a result of said attachment the aforesaid Lespier transferred in payment of the above-mentioned sum, to The People of Porto Rico, among other properties, the one described

in the preceding statement of facts, according to deed executed in San Juan on October 3, 1904, before Notary Julio Cesar González, acting for Santiago R. Palmer, which deed was refused admission to record in the registry of property.

III.

That The People of Porto Rico took possession of the above-described property in the month of October aforesaid, and is now the holder thereof, having leased the same to the aforesaid Adolfo Lespier, who has sub-let it to Gerónimo Sánchez.

IV.

That at the time of its attachment and transfer in payment there was no lien on the property which is the subject-matter of this complaint, in favor of The People of Porto Rico, for outstanding taxes or any other obligation, it being then, as now, the exclusive property of the plaintiff.

V.

That Manuel Rosaly, the plaintiff herein, has been deprived of the possession of the above-described property, and of the products thereof, since October, 1904, and has sustained losses from said dis-possession amounting to twelve hundred dollars (\$1,200.00).

4 Upon the strength of the foregoing, we pray the Court:

(1), To declare null and void the deed referred-to in the second statement of facts, as regards the property forming the subject-matter of this complaint.

(2), To restore said property to the plaintiff, together with the products thereof, amounting to \$1,200.00.

(3), To declare without legal effect or value the leases referred to, and eject the defendants from the property, with costs taxed against them.

Ponce, Porto Rico, August 29, 1908.

(Signed)

JOSE TOUS SOTO,
Counsel for Plaintiff.

I, Manuel Rosaly Castillo, do solemnly swear that the facts set forth are true according to my own knowledge.

Ponce, Porto Rico, August 29, 1908.

(Signed)

MANUEL ROSALY.

Register No. — Sworn to and signed before me by Manuel Rosaly y Castillo, of legal age, property-owner, a resident of this city, who is personally known to me, this 29th day of August, A. D. 1908.—Augusto Pasarell, Notary-Public.—Notarial seal.—Filed August 29, 1908.—F. Barnés, Clerk, by F. W. Preston, Deputy-Clerk.—Deposited \$10.00.

Demurrer.

In the District Court of the Judicial District of Ponce, Porto Rico.

Now come the Attorney-General of Porto Rico and the District Attorney of Ponce, representing The People of Porto Rico, and allege:

5

I.

That there is a misjoinder of parties defendant, because the complaint is directed against The People of Porto Rico and against Adolfo Lespier and Gerónimo Sánchez, whereas neither of these two persons have any direct interest in this action to recover possession, inasmuch as the former is not now the owner of the property in question, but a mere lessee thereof, and the latter is a sub-tenant without any intervention in the ownership of the property, this being specially the case since in the complaint no indication is made as to whether or not these leases are recorded in the registry of property.

II.

That several causes of action have been improperly united, inasmuch as, while declaring in the title of the complaint that the action exercised is for the recovery of possession, in the prayer a request is made for the nullification of the leases entered into, which implies a cause of action entirely different from the former, which should be prosecuted separately and in view of the outcome of the former.

We pray the Court that it be pleased to admit the foregoing demurrer, imposing costs upon the plaintiff.—J. H. Brown, Assistant Attorney-General.—Rafael Palacios Rodriguez, District Attorney.—Filed October 20, 1908.—F. Barnés, Clerk, by F. W. Preston, Deputy-Clerk.

Determination of Demurrer.

In the District Court of the Judicial District of Ponce, Porto Rico.

6 An action to recover possession has been instituted by Mr. Rosaly against The People of Porto Rico, as owner of a tract of land, and also against two other persons, as lessee and sub-tenant, respectively. The People of Porto Rico has demurred to the complaint, alleging that there is a misjoinder of parties defendant and that several causes of action have been improperly united.

The matter is a doubtful one; but in view of Section 63 of the Code of Civil Procedure, and Section 379 corresponding thereto, of that of California, and the opinions of the Supreme Court of said State, cited in Pomeroy's edition, the demurrer has no foundation. Twenty days given for the filing of the Answer.—Ponce, Porto Rico, November 28, 1908.—Martin E. Gill, District Judge.

Answer to the Complaint.

In the District Court of the Judicial District of Ponce, Porto Rico.

Now come the Attorney-General of Porto Rico and the District Attorney of Ponce, on behalf of The People of Porto Rico, and allege by way of Answer to the complaint:

I.

We deny the facts contained in the first statement of the complaint.

II.

We accept as true the facts related in the second statement of the complaint.

III.

The facts contained in the third statement of the complaint are true inasmuch as refers to the possession of the property described in the first statement of the complaint by The People of Porto Rico, and the lease thereof to Adolfo Lespier; but, having not sufficient knowledge of the other particulars contained in the aforesaid third statement, we deny the same.

IV.

We deny the facts referred to in the fourth statement of the complaint.

V.

Not having sufficient knowledge of the facts set forth in the fifth statement of the complaint, we likewise deny the same.

We pray the Court to dismiss the complaint by rendering judgment for the defendant with costs against the plaintiff.—San Juan, Porto Rico, for Ponce, December 9, 1908.—J. H. Brown, Acting Attorney-General.—Rafael Palacios Rodriguez, District Attorney.—I, J. H. Brown, Acting Attorney-General of Porto Rico, do solemnly swear that the facts set forth in the foregoing complaint (sic) are true according to my information and belief.—San Juan, Porto Rico, December 9, 1908.—J. H. Brown.—No. 129.—Sworn to and signed before me this 9th day of December, 1908, by J. H. Brown, Acting Attorney-General of Porto Rico, of legal age, whom I personally know.—Eduardo Acuña, Notary Public.—Filed December 14, 1908.—F. Barnés, Clerk, by F. W. Preston, Deputy-Clerk.—There is a notarial seal.

8

Entry of Default.

To the Clerk.

SIR: Please enter in the present case the default of the defendants Adolfo Lespier and Gerónimo Sánchez, who were personally summoned to answer the complaint,—Lespier on the 21st, and Sánchez on the 19th, of September, 1908,—both of them failing to respond to said summons.—José Tous Soto, Counsel for Plaintiff. In Ponce, October 30, 1909.—It appearing from the summons returned and filed herewith by the plaintiff that on the 19th of September, 1908, summons in this case was personally served in this city upon the defendant, Geronimo Sánchez, and on the 21st of the same month the other defendant, Adolfo Lespier, was also personally summoned in this city—which summons were served in a legal manner—and neither of said defendants having as yet appeared or answered the complaint, on motion of plaintiff, through its counsel, I make the present entry of default in order that the same may have the proper legal effects.—Ponce, October 30, 1909.—S. Vivaldi Pacheco, District Clerk, By J. A. Lopez, Assistant District Clerk.

9

Opinion.

In this case there is no doubt whatever that the plaintiff Rosaly is the owner of the estate, subject-matter of this complaint, with title duly recorded in the Registry of Property. The Court is of opinion that the possession of The People of Porto Rico is in bad faith, for the following reasons: The Registrar refused to record the award made by Lespier, because the estate belonged to Rosaly. The cautionary notice of attachment was also denied for the same reason. That Rosaly protested before the Treasurer against the lease made by the People of Porto Rico in favor of Lespier. Because the Attorney General had occasion to be convinced as to the truth of the first fact alleged in the complaint, by consulting the Registry of Property of Ponce, and admit his fact instead of denying it in the answer. Wherefore, the Court is of opinion that the plaintiff Rosaly should recover from the defendants the sum of \$1,200.00 as an indemnity for the products collected and the value of the products he could have collected, had he not been deprived of possession. Sections 365, 457, 436, 365 and 366, of the Civil Code. The Court renders judgment in favor of the plaintiff in conformity with the prayer of the complaint.

November 20, 1909.

CHARLES E. FOOTE.

District Judge.

10

Judgment.

In the City of Ponce, P. R., November 20, 1909.—On the 30th of November, last, (sic) a hearing was had of this case, the plaintiff, through his counsel José Tous Soto, and The People of Porto Rico,

through its representative, having appeared, while the defendants Adolfo Lespier and Gerónimo Sánchez were entered in default. The Court, after hearing the allegations and proofs of the parties and their oral arguments, is of opinion that the law and the facts are in favor of the plaintiff, and, accordingly, declares that the deed dated October 3, 1904, executed before Notary Julio César Gonzalez, of San Juan, is null and void, inasmuch as the property forming the subject-matter of this complaint is therein transferred in payment to The People of Porto Rico by Adolfo Lespier; and the contracts of lease of the same property executed by the People of Porto Rico in favor of Adolfo Lespier, and by the latter in favor of Gerónimo Sánchez, are likewise declared null and void; and the property constituting the subject-matter of this litigation is ordered to be restored to the plaintiff by The People of Porto Rico, together with the products and rents thereof accrued since October, 1904, when said defendant took possession, the same amounting to twelve hundred dollars, costs being taxed against the defendants. The description of the property, subject-matter of this judgment, is, as follows:

"A tract of land situated in *barrio* Real, Municipality of Ponce, "at the place known as 'Agustinillo,' consisting of 24 cuerdas (7 "hectares, 86 acres and 8 centares). Bounded on the North by "lands belonging to Adolfo Lespier and Marcelina Rodriguez; on "the South by lands of Manuel Rosaly and estate of Simón León; "on the East by those of Juan Colón; and on the West by lands of "José Pontón."

CHARLES E. FOOTE,
District Judge.

11

Appeal.

To the District Clerk, Ponce, Porto Rico.

SIR: Please take notice that the defendant, The People of Porto Rico, against whom judgment has been rendered in this case, represented by the District Attorney, takes an appeal to the Supreme Court of Porto Rico, from the final judgment rendered on the 20th instant, and registered the same day.—Ponce, P. R., November 22, 1909. Rafael Palacios Rodriguez, District Attorney, Representing The People of Porto Rico. Notified of the present appeal this 22nd day of November, 1909. José Tous Soto, Counsel for Plaintiff. Filed November 22, 1909. S. Vivaldi Pacheco, Clerk, by J. A. López, Deputy Clerk.

12

Statement of Facts.

The hearing of this case was had in the District Court of the Judicial District of Ponce, P. R., on the 30th of October, 1909.

The party-plaintiff submitted as evidence a certificate from the Registry of Property of Ponce which was admitted by the Court without opposition, and reads as follows:

"Ponce, P. R., December 16, 1908. To the Register of Property of Ponce, P. R. Sir: Please order that a certificate be issued to me with reference to the following particulars: 1. Certified copy verbatim of the record of ownership in favor of Manuel Rosaly y Castillo, on Folio 110, Book 120, of Ponce, Estate 4437, triplicate, Entry 6th, of a rural estate of 20 cuerdas in barrio Real, of Ponce, giving a description of said estate; 2. Certificate relating to the previous records beginning from the record in favor of Adolfo Lespier by purchase from Eugenio Rodriguez, inclusive; 3. Certificate relating to the cancellation of the cautionary notice of attachment in favor of The People of Porto Rico, for outstanding taxes, fiscal years 1898-99, 1899-1900, and 1900-01; 4. Certified copy of provisional entry, letter 'F,' on Folio 111, of aforesaid book, stating whether the same was extinguished, or has been converted into a final record; 5. Certificate relating to any lien recorded on aforesaid estate in favor of The People of Porto Rico, or refusal to record, if any. Respectfully, José Tous Soto, Parol-Attorney for Manuel Rosaly."

"I, José Santraño Belaval, Registrar of Property of this District, do hereby certify: That complying with the requests made in the foregoing petition, I have examined the records of Estate No. 4437, triplicate, of Book 120, of Ponce, referred to therein, and with respect to Inquiry No. 1 it appears that on Folio 110 is found Entry 6th, which literally reads as follows:

"Rural 1. Parcel of land described in the first record thereof on Folio 190, Volume 108, of Ponce, to which I refer, inasmuch as it agrees with that of said estate made in the title now filed. Value thereof two hundred dollars. It appears affected by the right of redemption in favor of José Pontón y González, resulting from previous Entry 5th. Eulalio Rosaly acquired the estate in question, as shown by aforesaid Entry 5th. And from the deed executed in this city, *October 19, last*, before Notary Manuel León Parra, it appears that *Eulalio Rosaly*, with the consent of his wife, sold said estate together with eight others, and at the same time assigned a mortgage-credit, to Manuel Rosaly y Castillo, unmarried and a resident, all for \$4,245.00, which the vendor acknowledged having received, as appears more specifically from Entry 12th of Estate No. 500, triplicate, on Folio 133, Volume 64, of this city. On the strength thereof, Manuel Rosaly Castillo records in his favor the estate bearing this number, as acquired by purchase without any condition whatsoever. The other estates and the credit are recorded as indicated in the original entry. Ponce, November 5, 1903. Beleval.

"The description of aforesaid estate, according to the 1st record cited, is as follows:

"Rural. Parcel of land situated in barrio Real of this Municipality at the place known as 'Agustinillo,' consisting of twenty cuerdas, equal to 7-hectares, 86-ares, and 8-centares, dedicated to the planting of coffee; bounded on the North by lands belonging to Adolfo Lespier and Marcelina Rodriguez; on the South by other

"lands of Manuel Rosaly y Castillo and those of the estate of Simeón León; on the East by more lands of Juan Colón, and on the West by other lands belonging to José Pontón.—2d. As to the second particular of the request, it appears that the records prior to the one inserted above are as follows:

"The first, made on Folio 190, Book 108, of this Municipality, was made in favor of Adolfo Lespier and had reference to the possession of aforesaid estate, which he established in proceedings had in the court of this District and was approved by an order of March 9, 1900, in which it was stated that said Lespier had acquired the same by purchase from Eugenio Rodríguez, and had no written title. The second record, appearing on Folio 190, reverse, of the same volume, was that of possession made in favor of Eulalio Rosaly y Vázquez, who had acquired it by purchase from Adolfo Lespier for a valuable consideration, according to deed executed in this city on May 21, 1900, before Notary Rafael León, said contract being conditioned upon the vendor's right of redemption within a period of two years, which expired May 1, 1902. The third record of said estate, appearing on Folio 191, reverse, of the same volume (108), was made in favor of Adolfo Lespier, pursuant to the redemption clause aforesaid, Eulalio Rosaly Vázquez acknowledging receipt of the price agreed upon in a deed executed in this city, December 23, 1901, before Notary Rafael León. The fourth record, entered on Folio 192 of said volume, was made in

14 "favor of José Pontón González, who acquired his title to aforesaid estate by purchase from Adolfo Lespier for a valuable consideration, according to deed executed in this city December 23, 1901, before Notary Rafael León. The fifth record, on Folio 192, reverse, of aforesaid volume, was made in favor of Eulalio Rosaly Vázquez, who acquired the property by purchase from José Pontón y González, for a valuable consideration, according to deed executed in this city December 23, 1901, before Notary Rafael León, said contract being made with the condition that if the vendor or his heirs desired to redeem the estate they would have to return to the vendee the price received for this and another estate within the term of two years which expired December 23, 1903; but if at the expiration of the term the price was not returned, the sale in favor of the vendee would be considered final, without further proceedings, except that of making the proper entry at the Registry; it being also stipulated that if said Pontón should comply with everything that had been agreed the right to redeem would be extended to another period of two years, to expire on December 23, 1905, with the understanding that he would have to redeem both estates included in the contract, and in no wise one of them only, said extension of time being optional on the part of the vendee, and not obligatory.—3. As to the third particular referred to in the petition, it appears that on Folio 110, Volume 120, there is a notice marked letter D., cancelling cautionary notice, letter C, of aforesaid estate, made in favor of The People of Porto Rico, as to the latter's right to attach the same to secure, together with another estate, the sum of \$45.08,

"due on account of outstanding taxes, no mention being made of the
"corresponding fiscal year, and a charge of one hundred dollars for
"costs and expenses; which cancellation was made by order of Bar-
"tolomé Esteva, Collector of Internal Revenues of this city, accord-
"ing to certificate issued January 9, 1903.—4. With respect to the
"fourth particular contained in the petition, it appears that cau-
"tionary notice, letter F, with reference to aforesaid estate, entered
"on Folio 111 of above-mentioned Volume 120, is conceived in the
"following terms:

"Rural. A parcel of land described in the first record thereof in
"accordance with the instrument presented. Valued at \$885.00.
"This estate is encumbered by the condition stipulated in the con-
"tract inserted in the 5th record thereof, and is moreover affected by
"the attachment which is the object of cautionary notice, letter E.
"Manuel Rosaly has this property entered in his name, according
"to the preceding Record 6th. And from the deed executed in the
"City of San Juan, October 3, last, before Notary Julio César Con-
"zalez, acting for Santiago R. Palmer, it appears that this estate,

15 "together with other properties, was awarded to The People
"of Porto Rico in payment of the sum of \$1,904.70, which,
"according to liquidation, was due by Adolfo Lespier as a
"result of the compulsory proceedings instituted against him by the
"Collector of Internal Revenues of this city, for the recovery of
"taxes and balance appearing against him as surety for Manuel
"Figueroa Peña, of which award Adolfo Lespier was notified, he
"making a formal delivery to The People of Porto Rico of all the
"property belonging to him that had been attached, among which
"is included aforesaid estate, valued at \$885.00, in payment of
"\$1,904.70, amount of his aforesaid debt, as stated more fully in
"the 10th record of Estate No. 2764, triplicate, entered on Folio 63,
"Volume 107 of this city. But noticing that said estate is recorded
"in favor of Manuel Rosaly y Castillo, with whom the compulsory
"proceedings had nothing to do, nor has he intervened in the mat-
"ter, and that the taxes on the estate due by Adolfo Lespier appear
"merged with his responsibility as surety for Manuel Figueroa, I
"refuse admission to record, and accordingly a cautionary notice is
"entered in favor of The People of Porto Rico, on its award, to have
"effect during four months. The instrument comprises four other
"estates and a mortgage credit, which are recorded and annotated
"as indicated at margin.—Ponce, November 18, 1904.—Belaval.

"The cautionary notice has lapsed, the period of four months hav-
"ing expired without a correction of the defects giving rise thereto.

"And, lastly, as regards the fifth particular mentioned in the peti-
"tion, it is here stated that on Folio 111 of aforesaid Volume 120
"is found the cautionary notice of said estate, marked letter E,
"wherein the right of attachment of The People of Porto Rico was
"entered in so far as concerned the amount of taxes due by Adolfo
"Lespier for the years 1901-02, 1902-3, and 1903-04, which, to-
"gether with the balance against Lespier as surety for Manuel
"Figueroa Peña, and attendant surcharges, interest and expenses,
"aggregated \$1,751.03, according to liquidation made on May 25,

"1903, the entry of which balance was refused, while the attachment was decreed pursuant to instructions of the Treasurer of Porto Rico, in letter dated November 7, of said year, according to certificate issued by Bartolomé Estevea, Collector of Internal Revenues for this city. Cautionary notice of the attachment was entered with reference only to the amount of aforesaid taxes, and surcharges, with expenses in proportion, the curable defect being noted that the amounts of the former and latter items were not specified. And as to the amount of the balance that might result against Lespier as surety for Peña, with surcharges, interest and expenses, the entry thereof was refused, although cautionary notice of the same was taken, to have effect during four months, which period has expired.

"The record and cautionary notice transcribed, as also 16 "those herein described, agree with their original entries. In "witness whereof I issue the present certificate in Ponce, this "22nd day of January, 1909.—José Sastraño Belaval.—There is a "seal of the Registrar of Property, Ponce, P. R., and three cancelled "stamps: one for \$3.00, one for \$0.50, and one for \$0.10, No. 6 of "the Tariff.—Belaval."

"To the Registrar of Property,—Sir: Pray be pleased to supplement the preceding certificate by stating that the record of ownership in favor of Manuel Rosaly y Castillo continues in force.—Ponce, P. R., March 8, 1909.—José Tous Soto, attorney for Manuel Rosaly."

"I, José Sastraño Belaval, Registrar of Property for this city, do hereby certify: That complying with the foregoing request, I have examined the records of Estate No. 4437, referred to in the preceding certificate, and find that Record 6th of said estate, entered in favor of Manuel Rosaly Castillo, as owner thereof by purchase on Folio 110, Volume 120 of this Municipality, is in force. And that it may be known, the present is issued by me in Ponce, March 28, 1909.) José Sastraño Belaval." Two cancelled \$1.00 stamps, No. 6 of Tariff.—Belaval."

The same party submitted, moreover, oral evidence consisting of the testimony of the following witnesses:

MANUEL ROSALY (Plaintiff).—Testified: That he is a resident of Ponce, and an agriculturist, and that for more than twenty years he has possessed rural estates in this municipal district, among those one of 378 and another of 204 cuerdas; that the estate claimed by him in this suit is one of 24-cuerdas, situated in *barrio* Real of this Municipality, now held by The People of Porto Rico, from 1903 to 1904, as a result of an attachment levied by the Collector of Internal Revenues; that the estate in question was leased by The People of Porto Rico to Adolfo Lespier, who had sub-let it to Gerónimo Sánchez, one of the defendants; that he did not administer said estate, but had leased it—he having to attend to his other properties; that the chief product of this estate consisted of coffee and minor products, and at the time the attachment was levied he had from 10 to 12 cuerdas planted with aforesaid bean, which yielded about 30 quintals. That the price of coffee in 1904 was about the same as now,

that is, \$10.00 per quintal, which makes a total of \$300.00 for the 30 quintals; that the expenses for cultivation of coffee was about \$270.00 a year; that among the other products of the estate were oranges, the number of trees whereof he could not state positively, but they produced in the neighborhood of 35,000 oranges each crop, which were sold in the market at \$2.50 and \$3.00 per thousand, delivered on the estate; that there were also mafaños (Guinea bananas), royal palms, wood and other minor fruits, which were worth about \$400.00; that among other losses, he had sustained those caused by his lessees, because from the moment the estate was attached everything was suspended, the person he had in charge having to withdraw, he being unable to dispose of anything, the property suffering considerable damage; that the woods intended for charcoal have been destroyed; that he could appreciate all these damages, because about a year ago he had visited the estate and estimated said damages in \$1,200.00; that since the attachment was levied by The People of Porto Rico he had made constant efforts to recover the property forming the subject-matter of this suit, he having for this purpose applied to the competent courts, and prior to that to the Treasurer himself, but without any success.

JOSÉ PONTÓN.—This witness for the Plaintiff testified, as follows:

That he lived in barrio Real and is a property-owner and agriculturist; that it is now about twenty years since he has been engaged in the cultivation of rural estates, and he knows the property belonging to Manuel Rosaly, which is the subject of this suit, he having been in charge of said property from 1902 to 1903; that he left the estate in 1904, when the deputy-alcalde of the barrio, by order of the Collector of Internal Revenues, took possession of the property; that the deputy-alcalde was a person by the name of Pedro Ortiz, and the Collector's name was Bartolomé Esteva; that when The People of Porto Rico took possession of the estate he had to leave, he being told that if he again intruded on the premises he would be violently ejected by a couple of policemen; that he informed Rosaly Castillo of all this; that said estate yielded from 25 to 30 quintals of coffee, more or less; that the price of said bean at that time was from \$12.00 to \$15.00, and there were from 10 to 12 cuerdas planted with coffee. As to the expenses of cultivation his testimony agreed with that of the witness Manuel Rosaly, the plaintiff herein. That the annual yield was valued at from \$350. to \$400.00.

18 ADOLFO LESPIER. This witness testified as follows:

That he knows the estate which forms the subject-matter of this suit, the same being situated in the barrio Real, and whose boundaries are those described in the complaint; that he had leased said estate from The People of Porto Rico, and, in turn, had sub-let it to Gerónimo Sánchez, who at present occupies it; that the estate at the present moment belongs to The People of Porto Rico, which, by reason of a public sale, took possession of said lands.

The representative of The People of Porto Rico submits as evidence a deed of award executed in the City of San Juan on October 3, 1904, before Notary Julio César González, acting for Santiago R. Palmer, whereby Adolfo Lespier made formal assignment to The People of Porto Rico of all the properties attached as belonging to him, in the compulsory proceedings instituted by the Collector of Internal Revenues of Ponce for the recovery of taxes and balance resulting against him as surety for Manuel Figueroa Peña, the estate constituting the subject-matter of this suit being included among other properties attached.

The plaintiff objected to the admission of this document, and the objection was sustained by the Court, its admission being refused because the fact sought to be proven by said document was already admitted in the Second Statement of Facts of the Complaint, and in the Answer thereto, and because it was not entered in the Registry, its admission to record having been refused.

The representative of The People of Porto Rico took exception to this ruling of the Court. Rafael Palacios Rodriguez, District Attorney.—Copy of the foregoing was served upon me this 30th day of December, 1909.—J. Tous Soto, attorney for plaintiff. Presented December 30, 1909, By S. Vivaldi Pacheco, Clerk.

19

Approval of Statement of Facts.

District Court of Ponce, P. R.

No. 840.

MANUEL ROSALY Y CASTILLO

VS.

THE PEOPLE OF PORTO RICO, ADOLFO LESPIER, and GERÓNIMO SÁNCHEZ.

Action to Recover Possession.

The undersigned, Judge of the District Court, who had cognizance of this case and delivered the judgment appealed from thereto, after examining the foregoing Statement of Facts and Bill of Exceptions and taking into consideration the documents presented as Exhibits and the testimony offered by the witnesses for both parties, hereby certifies: That said Statement of Facts and Bill of Exceptions contains a true and faithful recital of all the evidence submitted and exceptions taken before the District Court of Ponce at the hearing of this case, all approved amendments presented by the Defendants and Respondents having been incorporated therewith, and that said Statement of Facts and Bill of Exceptions is a correct and true document, the same being hereby approved in all its parts and ordered to be placed on file by the Clerk of said District Court of Ponce and made part of the record hereof.

Ponce, Porto Rico, February 1, 1910.

CHARLES E. FOOTE,
District Judge.

20

Filing Entry.

The undersigned Clerk certifies: That, in compliance with the foregoing Order, the Statement of Facts and Bill of Exceptions mentioned above has been filed in the office of the Clerk of this Court and made part of the record of this case.

Ponce, P. R., January 8, 1910.

S. VIVALDI PACHECO,
Clerk of the Dist. Court of Ponce.

Stipulation and Certification of Attorneys.

We, Rafael Palacios Rodriguez, District Attorney for the District of Ponce, and as representative of The People of Porto Rico, Defendant and Appellant; and José Tous Soto, attorney for the Plaintiff and Respondent, hereby agree and certify: That the foregoing is a faithful transcript containing the correct and true copies, necessary for this appeal, of the originals on file at the Office of the Clerk of the District Court of Ponce, in the present case; and that the matter transcribed constitute the antecedents, documents, evidence and other proceedings, taken into consideration by the District Court of Ponce, for the purpose of delivering the judgment appealed from; and we sign this transcript in order that the same may constitute the record of this appeal and be used as such at the hearing thereof.

Ponce, February 9, 1910.

(S'g'd) JOSÉ TOUS SOTO,
Attorney for the Plaintiff and Respondent.
(S'g'd) RAFAEL PALACIOS RODRIGUEZ,
Representing the Defendant and Appellant.

21

In the Supreme Court of Porto Rico.

No. 511.

MANUEL ROSALY CASTILLO, Plaintiff and Respondent,
vs.
THE PEOPLE OF PORTO RICO, Defendant and Appellant.

Appeal from the District Court of Ponce.

Opinion of the Court.

Delivered by Mr. Associate Justice del Toro, San Juan, Porto Rico,
June 14, 1910.

This is an appeal taken from the judgment of the District Court of Ponce, sustaining the action to recover possession, instituted by Manuel Rosaly Castillo against The People of Porto Rico, Adolfo Lespier and Gerónimo Sánchez.

The defendants Lespier and Sánchez having been personally summoned, and failing to appear in due time, their default was entered and the proceedings continued with the sole intervention of The People of Porto Rico as defendant.

The appeal was taken by The People of Porto Rico, and the only ground alleged in support thereof before this Supreme Court was that inasmuch as The People of Porto Rico could not be sued without its consent, and such consent not appearing to have been given in this case, the District Court had acted without jurisdiction and the judgment rendered by it was null and void.

Let us study this interesting question with all the attention it deserves. We do not propose to discuss whether or not such privilege exists as regards The People of the United States, or The People of the States of the Union, or The People of some organized or incorporated territories. The case has been repeatedly decided in the affirmative by the Supreme Court of the United States. We must confine our study to Porto Rico.

During the Spanish domination, or even during its closing period, when the autonomical régime was established, Porto Rico could not be considered a sovereign, nor a quasi-sovereign. The sovereign was never Porto Rico, but always Spain.

22 By the Treaty of Paris, Spain ceded to the United States the Island of Porto Rico and other islands then under Spanish sovereignty in the West Indies, and the Island of Guam in the Marianas or Ladroneas.

The sovereignty, therefore, with respect to Porto Rico, passed, by virtue of said Treaty, from the Spanish to the American nation.

The Island was governed, at the inception of the new sovereignty, by a military government, and shortly afterwards—on April 12, 1900,—Congress promulgated an Act entitled "An Act Temporarily to Provide Revenues and a Civil Government for Porto Rico, and for Other Purposes."

Upon an examination of said Act in its entirety the conclusion is reached that although Congress did not constitute Porto Rico as an independent sovereign (Nation), nor as a sovereign incorporated with the American Union (State), there is no doubt that it conferred upon it a large portion of the attributes of sovereignty.

Among these attributes, do we find that of exemption from being sued without its consent?

Our Answer must be in the negative, after a careful study of the whole Act, and especially of Section 7, which reads as follows:

"SECTION 7. That all of the inhabitants continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Porto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the eleventh day of April, nineteen hundred, in accordance with the provisions of the treaty of peace between the United States and

"Spain entered into on the eleventh day of April, eighteen hundred
 23 "and ninety-nine; and they, together with such citizens of
 "the United States as may reside in Porto Rico, shall consti-
 "tute a body politic under the name of The People of Porto
 "Rico, with governmental powers as hereinafter conferred, and with
 "power to sue and be sued as such."

The words "power to sue and be sued" have always had an in-
 variable signification.

Blackstone, in his "Commentaries", says:

"11. After a corporation has been constituted and given a name,
 "as stated above, it *acquires many powers, rights, capacities and in-*
 "capacities, which we shall proceed to consider. Some of them con-
 "stitute necessary and inseparable elements of every corporation;
 "which, as soon as a corporation has been duly organized, are forth-
 "with implicitly acquired by the same. Such as 1. To have per-
 "petual *succession*. This is precisely the object of its incorporation;
 "because there cannot be a perpetual succession unless incorporation
 "exists; and, consequently, all such corporations as are formed by
 "the coming together of individuals have necessarily the power to
 "elect the members who are to replace those retiring. 2. *To sue and*
 "*be sued*, plead and be impleaded, grant or receive, in the name of
 "the corporation, and to perform all such acts as pertain to natural
 "persons. 3. —. 4. —. 5. —. These five powers are ele-
 "ments inseparably accompanying every corporation composed of a
 "gathering of individuals."—I Wendell's Blackstone Com. 475.

And Kent, also in his "Commentaries", says:

"(1) *Of their ordinary powers*.—The ordinary incidents to a cor-
 "poration are, 1. To have perpetual succession, and, of course, the
 "power of electing members in the room of those removed by death
 "or otherwise; 2. *To sue and be sued*, and to grant and to receive
 "by their corporate name; 3. —; 4. —; 5. —; 6. —.
 "Some of these *powers* are to be taken in many instances with much
 "modification and restriction."—2 Kent's Com. 278.

In the case of Bank of the United States vs. Deveaux et al., Chief
 Justice Marshall, of the Supreme Court of the United States, in de-
 livering the opinion of the Court, did so in the following terms:

"The plaintiffs contend that the incorporating act confers this
 "jurisdiction. That Act creates the corporation, gives it a capacity
 "to make contracts and to acquire property, and *enables* it to '*sue*
 "*and be sued*', plead and be impleaded, answer and be answered,
 "defend and be defended, in courts of record, or any other
 24 "place whatsoever.' This *power*, if not incident to a corpora-
 "tion, is conferred by every incorporating act, and is not
 "understood to enlarge the jurisdiction of any particular court, but
 "to give a capacity to the corporation to appear, as a corporation, in
 "any court which would, by law, have cognizance of the cause if
 "brought by individuals."—5, Cranch (U. S.), 85.

These words, besides referring to corporations of a private char-
 acter, were used with respect to municipal corporations and other
 private corporations, (See 28 Cyc. 1755).

Congress itself used them in legislating for the District of Columbia (see case of Metropolitan Railroad Company vs. District of Columbia, 152 U. S. 6); in determining the powers of corporations, (see Vol. 31, U. S. Statutes at Large, p. 1281, Sec. 578, and p. 1504, Sec. 721), and in creating the national banks (see case of St. Louis National Bank vs. Allen and others, 5 Fed. Rep. 551).

It has been alleged that the words "with power to sue and be sued", when used with respect to a sovereign or quasi-sovereign, such as The People of Porto Rico, should be given a restrictive construction, the construction given to said words when used with reference to corporations not being therefore applicable.

The words employed by the legislator are: "and they", together with such citizens of the United States as may reside in Porto Rico, shall constitute a *body politic* under the name of The People of Porto Rico, with governmental powers as hereinafter conferred, and with power to sue and be sued as such."

The words "body politic" are defined in 5 Cyc. 719 as "the collective body of a nation or state as politically organized, or as exercising political functions; a corporation."

By consulting "Words & Phrases Judicially Defined" it
25 will be seen that the phrases "body politic" and "Corporate" are used indiscriminately, and under the same title reference is made to *municipal corporations and to the states*.

"These artificial persons", says Blackstone, in treating of corporations, "are called bodies politic, bodies corporate (corpora corporata) or corporations." Ewell's *Essential of the Law*, p. 95.

The word "power", as it has been generally understood, implies "responsibility." Even the Legislature of Porto Rico has given it this interpretation when providing in Section 32 of our Civil Code that every corporation has power "to sue or be sued in any court," and by employing it in the "Act to Establish a System of Local Government, and for Other Purposes", approved March 8, 1906, when determining, in Section 2 thereof, that "the inhabitants of any municipality within the meaning of this Act are hereby constituted a *body politic and corporate* which shall have perpetual succession, may use its own official seal, *sue and be sued*." * * *

It is not possible to employ two different rules of interpretation to fix the scope of words whose meaning has been invariable during centuries. Congress, in using these words, has used them in their correct and well understood signification. Had its purpose been other, had it intended to confer upon Porto Rico the attribute of sovereignty, consisting of the privilege of not being sued without its consent, it would either not have used such words, as in the case of Hawaii, whose organic act was passed at the same session with that for Porto Rico, or it would have said "with power to sue and to consent to be sued."

The use of the words "with power to sue and be sued", in
28 our organic act, cannot be ascribed to an oversight of Congress, but, on the contrary, it may be supposed that Congress

employed them having in mind the obligations contracted in the Treaty of Paris, and with a desire to afford to the persons comprised in the stipulations thereof an easy access to the courts of justice against any invasion of their rights on the part of the administration. And, indeed, there should be no fear of entrusting to the courts the protection not only of the persons mentioned in the Treaty, but also of any other persons, without excluding The People of Porto Rico. An experience of more than ten years has demonstrated this sufficiently.

Although the only ground of appeal alleged has been the question of jurisdiction, which we have studied and decided, we have also carefully examined the transcript of the record and do not find that any fundamental error has been committed.

The appeal should therefore be dismissed and the judgment appealed from sustained.

(Signed)

EMILIO DEL TORO,
Associate Judge.

27

In the Supreme Court of Porto Rico.

No. 511.

MANUEL ROSALY CASTILLO, Plaintiff and Respondent,

vs.

THE PEOPLE OF PORTO RICO, Defendant and Appellant.

Appeal from District Court of Ponce.

Judgment.

SAN JUAN, PORTO RICO, June 14, 1910.

This Court has carefully examined the transcript of the record in this case and the allegations of the parties, and, for the reasons stated in the foregoing opinion, adjudges that it should affirm, and does affirm, the judgment rendered by the District Court of Ponce, November 20, 1909. A certified copy of this judgment, and the opinion on which it is based, is directed to be transmitted to aforesaid District Court, that due effect may be given thereto.

So do we pronounce, order and sign, Mr. Justice MacLeary dissenting.

(Signed)

JOSE C. HERNANDEZ.
ADOLPH G. WOLF.
EMILIO DEL TORO.

MANUEL ROSALY Y CASTILLO, Plaintiff and Respondent,
vs.

THE PEOPLE OF PORTO RICO, Defendant and Appellant.

Appeal from a Judgment Rendered by the District Court of Ponce.

Dissenting Opinion Filed by Mr. Justice MacLeary.

SAN JUAN, PORTO RICO, 21st of June, 1910.

I cannot agree to affirm the judgment of the trial court rendered in this case. Differing, as I do, in all essential points from the other Justices in the consideration and decision of this case, its importance demands that sufficient reasons should be given for my dissent. They will be set forth at some length.

This is an action of ejectment. The People of Porto Rico, as the defendant, claiming to be the owner, and two citizens of Ponce, as the defendants, claiming to be the tenant and sub-tenant in possession of a certain tract of land, were sued, in an action of ejectment, in the District Court of Ponce, by Manuel Rosaly, who also claims to be the owner, and entitled to the possession, of the same tract of land, which is fully described in his complaint. The usual allegations of ownership, possession and ouster are made; and the two private persons, who were summoned as defendants, made default. The People of Porto Rico appeared, through the Attorney-General and the District Attorney, and, first having sought

29 and taken a twenty days' extension of time to answer, demurred for a misjoinder of parties and also for an improper joinder of causes of action. These exceptions were overruled by the Court and the People of Porto Rico, as the defendant, was required to answer the complaint, which was accordingly done.

The default of the two private persons was noted, and, after a trial duly held and a full hearing therein, the Court, on the 20th of November, 1909, rendered judgment against all the defendants, including The People of Porto Rico, for the tract of land described in the complaint and the cancellation of the various writings by which the defendants claimed title thereto, for damages in the sum of One Thousand Two Hundred Dollars (\$1,200.00), and all costs of suit.

From this judgment the People of Porto Rico, in due time, took an appeal to this Court and filed the record herein, including a statement of the case duly and properly made out and certified. Both parties filed briefs, and the respondent made an oral argument. The two private persons who had been made defendants did not appeal. The case came on for hearing on the 4th of last month, and, after the trial, was taken by the Court under advisement; and finally decided, being affirmed, on the 14th of the present month.

There was no plea to the jurisdiction interposed in the District Court and no claim was there made by The People of Porto Rico that it could not be sued without its own consent. Nothing was said on this subject, as far as the record shows, by any of the parties until the case came before this Court on appeal.

30 However, the appellant now claims that this being a jurisdictional question it can be raised at any time in any court taking cognizance of the case. This proposition does not appear to be, directly or otherwise, disputed by the respondent, and it is sustained by ample authority.

Carr vs. United States, 98 U. S., 433;

M. C. & L. M. Ry. Co. vs. Swan, 111 U. S., 379;

Great Southern Fire-Proof Hotel Co. vs. Jones, 177 U. S., 499;

Reid vs. United States, 211 U. S., 529;

McLean vs. Arkansas, 211 U. S., 539.

But as a preliminary matter, which should be first settled, the respondent claims that this action is not really brought against the Government, but only against individuals claiming to be in possession of the land as agents of the Government. Then it may well be asked—"Why was the People of Porto Rico made a defendant in this action; and why was this judgment rendered against the body politic and corporate representing the State or Territory or Province or legal entity of Porto Rico?"

The respondent's counsel, in his brief, quotes a paragraph from the Opinion of the Supreme Court of the United States in a case decided in the year 1897,—viz:

"An action brought against individuals to recover the possession of land of which they have actual possession and control is not an action against the State within the meaning of the Constitution simply because those individuals claim to be in rightful possession as officers or agents of the State. Whether the one or the other party is entitled in law to possession is a judicial, not an executive or legislative question."

Tindal vs. Wesley, (1897), 167 U. S., 212.

The quotation is not made by counsel literally from the volume of Reports, but is substantially correct. Yet this decision has no bearing on the present litigation, for two reasons:

31 In the first place, the two cases are entirely dissimilar. In the *Tindal* case the State of South Carolina was not a party to the suit; but *Tindal* nevertheless sought to maintain that the action brought against him was in effect a suit against the State, because he was an officer of the State and held possession of the land as such. The Supreme Court decided adversely to this position, for the reasons given in the opinion.

In the second place, the Eleventh Amendment to the Constitution of the United States, forbidding suits against States, has reference alone to the courts of the United States and no others; and, besides, that amendment has never yet, so far as we are advised, been judicially held to be in force in Porto Rico. The exemption

from suit, in its own courts, and without its own consent, by the People of Porto Rico does not rest on the Eleventh Amendment to the American Constitution, but on the general and inherent rights of sovereigns—be they States or Peoples, Kingdoms or Republics. So the preliminary objection made by the respondent falls to the ground worthless.

The respondent further asserts that the People of Porto Rico has surrendered whatever claim it may have had to exemption from unauthorized litigation and implicitly consented to the prosecution of the present suit. The immunity from suit existing in favor of the State, under the Constitution or otherwise, is a personal privilege which it may waive at pleasure, and if the People of Porto Rico, as claimed by the respondent, have waived this privilege, in a proper manner, it cannot refuse to submit to the jurisdiction of the

32 Court.

Clark vs. Barnard, 108 U. S., 447.

The power to authorize suits against the Government is one peculiar to the legislative department thereof, and has never been assumed or exercised by the executive or the judicial departments. Hence, neither the Attorney-General nor any of his subordinates has, or ever had, any authority to waive this privilege or immunity from unbidden suits, even had they, or any of them, desired to exercise such an enormous power. The power to entertain such suits is a jurisdictional one, and this Court will never hold that it can be conferred on the Insular tribunals by the act or omission of any executive officer. We certainly have no wish to usurp jurisdiction over cases where the same is not conferred on us by the law of the land, nor will we suffer it to be imposed on us by any authorized officer of the Government.

The preliminary question presented to us here is: "Has the People of Porto Rico consented in any way to be sued in an ejectment case brought by a private citizen against the Insular Government in its own courts?" The Appellant answers this question in the negative. It further asserts that the only two exceptions to the general rule against the liability of the Government to unpermitted suits are found in Section 404 of the Political Code and Section 1804 of the Civil Code, Revised Statutes of Porto Rico, pp. 466 and 1164. These two sections read, as follows:

"SECTION 404. *Civil Responsibility*.—That the People of Porto Rico shall be liable for injuries to persons or property occurring through a defect, or want of repair, or of sufficient protection in
 33 "or upon an insular highway in charge of the bureau of public works, except where it shall be proved that such defects were caused by violence of the elements and that there had not been ample time in which to remedy them."
 Political Code, section 404, p. 466 of Rev. Stats.

"SECTION 1804. * * * The State is liable in this sense when it acts through a special agent, but not when the damage should have been caused by the official to whom properly it pertained to do the

act performed, in which case the provisions of the preceding section shall be applicable."

Civil Code, section 1804, par. 5, p. 1164 of Rev. Stats.

It clearly appears that neither of these sections is applicable to actions of ejectment nor to the trial of titles to land. Then, if these are the only cases in which permission to bring suits against the Insular Government has been granted, the permission claimed by respondent's counsel has not been granted for the institution of an action of ejectment. We then arrive at the conclusion that no consent has been given expressly or by implication for bringing the present action, and that it stands alone on the same base as any other suit bro-t against the Insular Government. This disposes of the preliminary questions raised by the respondent and brings us to the consideration of the main proposition.

The principal question then is squarely presented, whether or not the People of Porto Rico, as a body corporate and politic can be sued, in an action for the recovery of land and damages for its detention, in its own courts, without its consent. The Supreme Court of the United States has long ago recognized the immunity of sovereign governments from uninvited suits. In an opinion, written by Mr. Chief Justice Taney, and delivered more than fifty years ago, the doctrine is expressed as follows:

"It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission; but it may, if it thinks proper, waive this privilege, and permit itself to be made a defendant in a suit by individuals, or by another State. And as this permission is altogether voluntary on the part of the sovereignty, it follows that it may prescribe the terms and conditions on which it consents to be sued, and the manner in which the suit shall be conducted, and may withdraw its consent whenever it may suppose that justice to the public requires it."

Beers vs. Arkansas, 61 U. S., 529.

34 So to the same effect are numerous other cases among them,

Cunningham vs. M. & B. R. R. Co., 109 U. S. 451;

Hans vs. Louisiana, 134 U. S. 17;

Smith vs. Reeves, 178 U. S. 448;

Carr vs. Indiana, 11 L. R. A. 370.

The general principle of the immunity of sovereigns from hostile suits is well established, and a single authority on this point would be sufficient. The Arkansas case cited above. It is admitted generally that a State cannot be sued in its own courts unless it has expressly consented to abrogate in this particular the prerogative of sovereignty, and allow such a suit to be bro-t. A statute permitting suits against the State would be in derogation of its sovereignty, and should be strictly construed. The rule on this subject has been very clearly stated in the following cases:

State vs. Joiner, 23 Miss. 500;

Parmilee vs. McNutt, 1 S. & M. 179;
 Josselyn vs. Stone, 28 Miss. 753;
 Raymond vs. State, 54 Miss. 562; 28 Am. Rep. 383, and
 many others.

But this may be considered as a well established doctrine, in regard to the National Government and the States of the American Union, but not applicable to dependent organisms like territories or mere possessions or provinces, in which class it may be contended that it is necessary to place the People of Porto Rico.

It is contended that the People of Porto Rico constituted a private corporation or legal entity similar to the District of Columbia, and that the words in the Organic Act, "with power to sue and be sued" subject the Insular Government, by the authority of the American Congress, to the suit of any private individual who chooses to call it before its own courts. In support of this proposition, we are referred to the cases of Barnes vs. District of Columbia, to be found in 91 U. S. 547, and the Metropolitan R. R. Co. vs. District of Columbia, to be found in 132 U. S. 1. The case of Metropolitan R. R. Co. vs. District of Columbia originated in a suit brought by the District of Columbia itself, and not in one brought against it, and for that reason it cannot be cited to sustain the position of the respondent in this case.

But from the first of these cases, and the opinion therein rendered by Mr. Justice Hunt, it will be seen that the District of Columbia was by Act of Congress, passed on the 21st of February, 1871, constituted a municipal corporation with powers entirely similar to those conferred upon many cities in the United States, tho slightly enlarged, making the governorship a larger type of the usual mayoralty, and the legislative assembly an elaborate edition of an ordinary city council. It is easily seen that this corporation, thus constituted by the Act of Congress for the District of Columbia, lacks that very important inherent power of sovereignty, which is the making of laws on which rights depend. This power is the one on which the decision of this case turns, because it is announced by the highest judicial authority that the exemption from suit which pertains to a sovereign is not conferred and does not spring from any antiquated conception of obsolete theory of the law, but is based on the logical and practical ground that there can be no legal right asserted in the courts against the authority which makes the law on which the right depends; and, moreover, that this doctrine is not confined to states having full sovereign powers, but it extends also to artificial persons of limited sovereignty, such as the Territories of the United States, like Hawaii, Arizona and New Mexico, which, in actual administration, have and exercise the power to originate and change the law governing contracts and property. See *Kawananakoa vs. Polybank*, 205 U. S. 349. The District of Columbia never had the power to make such statutes as are necessary to change the law governing contracts and property; such laws as this being made for it by
 36 National Congress. The sovereign power of the District of Columbia being vested in the Government of the United States and not in the corporation of the District of Columbia, that munic-

ipal corporation has a right to sue and is subject to *the* sued under the ordinary rules that govern the law of procedure between private corporations and natural persons. The only possible similarity between the District of Columbia and the People of Porto Rico lies in the use made of the words "with power to sue and be sued," found in our organic act, which are not the key to the principle as is shown in the case cited from 205 U. S. 349 and other cases. On the fundamental question of legislative power to change the laws regulating contracts and property rights, there is no similarity whatever between these two artificial persons.

It is well said by the highest judicial authority that there is an immense difference between the District of Columbia and the various Territories of the United States, consisting in the fact that the latter are themselves the fountains from which rights ordinarily flow, altho Congress may intervene in their legislation, while in the former the body of private rights is created and controlled solely by Congress without the action of any District legislature.

Kawananakoa vs. Polybank, 205 U. S. 349.

Another fault in the reasoning by which it is sought to put the People of Porto Rico on the same plane with the District of Columbia lies in the failure to distinguish between Municipal Corporations and Political Corporations. The District of Columbia was merely a Municipal Corporation; its "Governor" was only an elaborated Mayor and its so-called legislature a kind of city council. Congress always made its laws, just as it does now, and the essential element of sovereignty defined by Mr. Justice Holmes, in 205 U. S. 349, was totally lacking. The words "sue and be sued" do not furnish the key to the question but "the authority to make the law on which rights depend," as announced by the Supreme Court of the United States in the case cited.

37 But the question is asked—why did Congress make a difference between the organic act of Porto Rico and that of Hawaii, which were passed within a month of each other? Doubtless these bills were evolved from distinct brains and were drawn by different scribes, and one followed one model and the other another. And the mere fact that the words "to sue and be sued" were inserted among the powers given to Porto Rico and omitted in those given to Hawaii was clearly due simply to an inadvertence or some such cause, and should be disregarded, as utterly unimportant, as was held in California in a similar case. It is our duty to construe the organic act, like every other statute, "so as to carry into effect the intention of the legislature as it appears from the whole act and from contemporaneous legislation."

Pond vs. Maddox, 38 Cal. 572 & 574.

Mr. Justice Holmes, speaking for the Supreme Court of the United States, holds that Territories, like Hawaii, enjoy the same sovereign privilege of exemption from unpermitted suit which are conceded to the several States of the Union. He says in the course of an extensive and able opinion:

"A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends, and as this doctrine is not confined to full sovereign powers it extends to those, such as the Territories of the United States, which in actual administration originate and change the law of contract and property."

Kananakoa vs. Polybank, 205 U. S. 349.

A comparison of the respective organic acts of Hawaii and Porto Rico will show the entire similarity of those two Territories, in so far as each is "the fountain from which rights ordinarily flow" and that one is just as independent as the other.

See Organic Act of Hawaii, 31 U. S. Stats. at Large 141; and Organic Act of Porto Rico, 31 U. S. Stats. at Large 77.

The case of *Kawananakoa vs. Polybank*, 205 U. S. 349, is exactly parallel with the one at bar and should govern this court in the decision of this question. The very able opinion of

Judge Rodey, of the United States District Court for the District of Porto Rico, in the *Elkins* case, recently decided, discusses the question fully and is worthy to be followed.

In construing a statute like the Organic Act of Porto Rico, in order to arrive at the intention of Congress, which is the object of all statutory interpretation, it is necessary to consider the whole act together and not to limit our observation to a single phrase. It is only from the whole statute taken together that the purpose of Congress can be ascertained. Thus we can determine whether the national legislature in the Organic Act intended to create of this newly acquired island, having an area of 3636 square miles inhabited by nearly a million people, a municipal corporation, such as is suitable for a small district or a city of restricted limits, or was it intended to provide a civil government for a people lately placed by the fortunes of war beneath the protecting folds of the American flag. The whole act, from the title to the enforcing clause, including the words "sue and be sued," indicates no other purpose than to create a civil government analogous in nearly every particular to those of the territories previously acquired in various ways, and not an intention to class this island with banks, railroad companies, insurance corporations and the like, or to place it on the same plane with the federal district, which Congress, for obvious reasons, keeps continually under its immediate and, it may be said, personal supervision.

1 Kent's Com., 461 & 462.

Parkinson vs. The State, 14 Md. 184; 74 Am. Dec. 529.

Notwithstanding these authorities it is further maintained that Congress itself has expressly given authority to whoever chooses so to do, to sue the People of Porto Rico, in its own courts; because in the Organic Act, section 7, it has declared that certain persons inhabiting this land, "shall constitute a body politic under the name of The People of Porto Rico, with governmental powers as hereinafter conferred, and with power to sue and be sued

as such. Rev. Stats. P. R. p. XVII, §1 Statutes at Large of the U. S. chapter 101 p. 79. It will be observed that this section confers a power and does not impose an obligation, and that the power granted is conferred on the People of Porto Rico and not on any other person. Then, as I think, this section should be construed as conferring on the People of Porto Rico the power to authorize suits to be brought against that legal entity in its own courts, whenever it may seem wise or just to elect that method of adjusting claims against the insular government. The local legislature has the duty imposed upon it to define the cases or classes of cases in which this may be done, and to designate the courts having jurisdiction of the same and the methods of procedure which should be observed in all such cases. This the legislature has done in two classes of cases in section 404 of the Political Code and in section 1804 of the Civil Code; which have been examined and are found not to include cases like the one now under consideration. The legislature also has, on rare occasions, conferred on the insular courts jurisdiction to hear and determine special cases; as it did some years ago when it imposed on this Supreme Court original jurisdiction to try and to decide the claims of the Roman Catholic Church to certain lands and buildings in this city and other parts of the island.

The fact that this right to bring suits against the People of Porto Rico, in certain cases and classes of cases, has been sometimes granted by the insular legislature, clearly shows that in other cases and classes of cases such a right has been withheld. This attribute of sovereignty would naturally, after having been conferred or left intact by the Congress of the United States, be jealously guarded by our insular government, and preserved inviolate by the legislature of the island.

The words "power to sue and be sued" mean nothing more than capacity to litigate, or conduct business in the courts of the country. They do not confer jurisdiction of the person on any court, nor do they restrict such jurisdiction. An instructive case, in this connection, is that decided by Justice McCrary, in the year 1881, styled *St. Louis Nat. Bank vs. Allen*, 5 Fed. Rep. 551. He says that the words "to sue and be sued" give to a corporation "only the general capacity to sue and not a particular privilege to sue in the courts of the United States." To the same effect is the opinion of the Supreme Court of the United States, rendered by Mr. Chief Justice Marshall, in the year 1809, in the case of *U. S. Bank vs. Deveaux* (5 Cran-h), 9 U. S. 85. In this opinion Chief Justice Marshall says:

"The plaintiffs contend, that the incorporating act confers this jurisdiction. That act creates the corporation, gives it a capacity to make contracts and to acquire property, and enables it "to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in courts of record, or any other place whatsoever." This power, if not incident to a corporation, is conferred by every incorporating act, and is not understood to enlarge the jurisdiction of any particular court, but to give a capacity to the corporation to appear, as a corporation, in any court which would by law, have

cognizance of the cause, if brought by individuals. If jurisdiction is given by this clause to the federal courts, it is equally given to all courts having original jurisdiction, and for all sums however small they may be."

So it is clear that these words, "to sue and be sued," do not subject the corporation, to which they are applied, to the jurisdiction of any court whatever, nor authorize any person to invoke such jurisdiction not otherwise conferred.

We are certainly not justified in giving to the words "sue and be sued" such a narrow construction as to totally defeat the purpose of the Organic Act; which is declared in its title to be "to provide civil government for Porto Rico" among other objects had in view by the

law-making power. Taking the whole act together it clearly
41 appears to have been the object of the National Congress to erect in this island a government very similar to the usual territorial governments created for newly acquired possessions on the continent, some of which have been in existence for more than half a century.

It is said, on behalf of the respondent herein that to exempt Porto Rico from unpermitted suits would be a dangerous proceeding, in view of the fact that the Insular Government has issued bonds which are held by many persons in the United States and elsewhere, and that they, in case of default, should have the right to go into the courts to collect them. Without discussing the ultimate question of the execution of the judgment in case one should be rendered, it is sufficient to allay all fears to remind investing capitalists that, should the Insular Government attempt to repudiate its obligations, Congress at any time, by virtue of the reserved power remaining in its hands, can compel a compliance with all such obligations; and there is no danger whatever of any refusal to pay all just debts on the part of the People of Porto Rico.

It does not matter in the least what may have been the law or the practice in regard to bringing suits against the Province of Porto Rico in such cases, during the Spanish domination. Nor is any question involved in this case which requires the interpretation of the Treaty of Paris by which the island of Porto Rico was transferred to the United States. We are administering the laws of Porto Rico under the American Government and must follow the principles of public law, especially as regards questions of sovereignty, laid down by the Congress of the United States and interpreted by the American courts.

This organic law of our island has, in everything except the name, granted to our people a complete system of territorial govern-

ment. It establishes the three co-ordinate branches of admin-
42 ministration, now almost universal among free peoples, the legislative, the executive and the judicial, tho in some particulars, like in the Government of Great Britain, they overlap each other. We have a Governor who is the head of the executive department consisting of numerous branches, aiding him in the discharge of his high functions, a bicameral legislature which makes our laws, subject only to revocation, amendment or alteration by the American Congress, a power very rarely exercised; a complete judicial system, consisting of one Supreme Court, several District Courts, many

Municipal Courts, and various courts of justices of the peace. Besides we have within our territorial limits, a Federal Court with more ample jurisdiction than many of the District Courts of the United States existing on the continent.

Our Legislature, exercising, to that extent, its sovereign powers, has adopted several complete American Codes of laws, consisting of a Political Code, a Civil Code, based largely on the old Spanish Civil Code, a Penal Code and a Code of Criminal Procedure, a Code of Civil Procedure, an elaborate law of Evidence, and has to some extent modified the Spanish Mortgage Law and the pre-existing Code of Commerce; and at its annual sessions is continually making changes and improvements in the existing body of statutes. Thus we find our Insular Government exercising all the essential attributes of sovereignty fully to as great an extent as any organized territory of the United States. Free government exists in Porto Rico not restrained by the Superior Government at Washington, but sustained, guided, and protected thereby, in all its functions, operated for the benefit of our people, in their enjoyment of life, liberty and property, and in the pursuit of enlightened prosperity and happiness.

43 Beside the authorities already cited, the Supreme Court of the United States, in a case decided in 1908, held that Porto Rico is a completely organized territory of the United States, tho it had not yet been incorporated into the body thereof, and that at least Porto Rico was a territory such as is contemplated in the national statutes in regard to extradition and interstate rendition.

U. S. Stats. sec. 5278;

People of New York ex rel. Koper, vs. Bingham, 211 U. S. 476.

And that this is so because Porto Rico has in force a complete system of local self-government, and our legislature of itself makes, modifies, changes and repeals its laws, at its own pleasure, subject, of course, as is the case in Arizona and other territories on the continent, to the supervisory powers of Congress. Then it clearly follows that Porto Rico has the sovereign powers, in its ordinary functions, to enact and modify the laws of property and proprietary rights, the regulation of contracts and obligations, and other laws from which its citizens derive their civil rights, and is just as much a sovereign, and exercises as many sovereign powers as any of the continental territories, which have long since been incorporated into the United States as a part of the body politic.

Elkins vs. People of Porto Rico, decided by the U. S. District Court for Porto Rico in 1909.

Then, taking the view expressed in the foregoing pages, we should hold that the District Court of Ponce had not jurisdiction to hear and determine such a case as this against the People of Porto Rico, and that in so far as it relates to the Insular Government, the judgment rendered by the said trial court in this case, on the 20th day of November last, should be reversed, and a judgment here rendered dismissing the complaint made against the People of Porto Rico.

(Signed)

J. H. MACLEARY.

No. 511.

MANUEL ROSALY Y CASTILLO,

versus

THE PEOPLE OF PORTO RICO, ADOLFO LESPIER, and GERÓNIMO SÁNCHEZ.

Action to Recover Possession.

Appeal.

Now comes the defendant and appellant in the above-mentioned case through its Attorney, Foster V. Brown, Attorney-General of Porto Rico, and sets forth:

That he takes an appeal from the judgment rendered by this Supreme Court on June 14, 1910, to the Supreme Court of the United States, wherefore he prays the Court to fix the amount of the bond to be furnished by us to secure the costs that may be caused to the adverse party by reason of said appeal and at the same time to allow us a period of sixty days for preparation and translation of the record to be used for the prosecution of said appeal.

San Juan, Porto Rico, June 18, 1910:

(Signed)

FOSTER V. BROWN,
*Attorney-General of Porto Rico and Attorney
for Defendant and Appellant.*

No. 511.

MANUEL ROSALY CASTILLO, Plaintiff and Respondent,

vs.

THE PEOPLE OF PORTO RICO et al., Defendants and Appellants.

Appeal from the District Court of Ponce.

Decision.

SAN JUAN, PORTO RICO, June 20, 1910.

The appeal taken by the Hon. Attorney-General, on behalf of the defendant, to the Supreme Court of the United States from the judgment rendered by this Supreme Court, on 14th inst. in the aforementioned case, is allowed; the bond to be furnished by the defendant is fixed in the sum of two hundred dollars, and a period of sixty days is allowed for preparation and translation of the record to be forwarded to the Supreme Court of the United States.

Decided and signed by the Justices of the Supreme Court.

(Signed)

JOSE C. HERNANDEZ.
J. H. MACLEARY.
ADOLPH G. WOLF.
EMILIO DEL TORO.

46

In the Supreme Court of Porto Rico.

No. 511. Law.

MANUEL ROSALY CASTILLO, Plaintiff and Appellee,

vs.

THE PEOPLE OF PORTO RICO, Defendant and Appellant.

Appeal from a Judgment Rendered by the District Court of Ponce.

Assignment of Errors.

The Defendant appears through Foster V. Brown, Esq., Attorney-General of Porto Rico, and appeals from the final judgment of this Court to the Supreme Court of the United States, and assigns as error the following:

The Court erred in entertaining jurisdiction, because for all necessary purposes of Government the Defendant, The People of Porto Rico, is a sovereignty and not liable to suit without its consent.

Wherefore, said defendant and Appellant prays that the judgment of said Supreme Court of Porto Rico be reversed and that said Court be directed to dismiss the action.

(Signed)

FOSTER V. BROWN,
*Attorney-General of Porto Rico, Attorney
for Defendant and Appellant.*

47

TREASURY DEPARTMENT OF PORTO RICO,

BUREAU OF ACCOUNTS,

SAN JUAN, Aug. 1, 1910.

SIR: Your claim for amount due as deposit for an appeal bond, Manuel Rosaly vs. The People of Porto Rico, et al., having been passed by the Auditor of Porto Rico, I herewith enclose Treasurer's Draft No. 58, for \$200.00, on account of the same.

Respectfully,

(Stamped)

S. D. GROMER, *Treasurer.*

The Secretary of the Supreme Court, San Juan, Porto Rico.

The People of Porto Rico.

Office of the Treasurer of Porto Rico.

Treasurer's Draft No. 58, \$200.00.

On Settlement Warrant No. 58, Dated July 29, 1910.

SAN JUAN, July 30, 1910.

Pay to Secretary of the Supreme Court of Porto Rico, or order, two hundred dollars in the money of account of the United States.

(Signed)

S. D. GROMER, *Treasurer.*

To American Colonial Bank, San Juan, P. R.

P. O. Address: San Juan, P. R.

MANUEL ROSALY CASTILLO; Plaintiff and Respondent,

VS.

THE PEOPLE OF PORTO RICO et al., Defendant, the Former Appellant.

Appeal from the District Court of Ponce.

Decision.

SAN JUAN, PORTO RICO, August 3, 1910.

In view of the communication from the Hon. Treasurer of Porto Rico to the Secretary of this Court, accompanying a certificate of deposit for the sum of two hundred dollars, as bond to secure the results of the appeal taken by The People of Porto Rico in the above-mentioned case, said bond is approved and shall be subject to the responsibilities mentioned in the decision of this Court on June 20, 1910.

Decided and signed by the Hon. Emilio del Toro, Associate Justice.

EMILIO DEL TORO,

Associate Justice.

MANUEL ROSALY Y CASTILLO, Plaintiff and Respondent,

VS.

THE PEOPLE OF PORTO RICO, Defendant and Appellant.

Motion for Extension of Time to Present the Transcript of Record in the Supreme Court of the United States.

Now comes the Attorney-General of Porto Rico, on behalf of the defendant and appellant in the above-entitled case, and prays that the Hon. Emilio del Toro, Associate Justice of the Supreme Court of Porto Rico, be pleased to issue an order extending the period of sixty days fixed in the citation for the purpose of presenting the transcript of record in the Supreme Court of the United States, this extension being requested because the term expires to-day and there is no material time in which to file the record at the office of the Secretary of aforesaid Court. The extension respectfully requested by the party defendant and appellant is of 30 days from the date hereof, which are considered sufficient for the proper transcription of the record and the transmission thereof to said Supreme Court of the United States.

San Juan, Porto Rico, August 23, 1910.

(Signed)

FOSTER V. BROWN,

Attorney-General of Porto Rico,
Attorney for Defendant and Appellant,
By H. M. H.

50

In the Supreme Court of Porto Rico.

No. 511.

MANUEL ROSALY Y CASTILLO, Plaintiff and Appellee,

vs.

THE PEOPLE OF PORTO RICO, Defendant and Appellant.

Order for Extension of Time in which to Docket Case and File Record.

Now on this 23rd day of August, 1910, upon written motion of attorney for defendant and appellant, for good cause shown and upon the minutes and proceedings of the Court in this cause, it is hereby ordered, considered and adjudged that the time within which the said defendant and appellant may docket this case and file the record thereof with the Clerk of the Supreme Court of the United States, be and the same is hereby extended and enlarged for the period of thirty days from the return day of the citation issued herein upon the 23rd day of August, 1910, or until the 22nd day of September, 1910, including that day.

Dated at San Juna, Porto Rico, this 23rd day of August A. D. 1910.

EMILIO DEL TORO,

Associate Justice of the Supreme Court of Porto Rico.

51

UNITED STATES OF AMERICA,

Island of Porto Rico:

This is to certify that the foregoing is a true and correct translation from the Spanish language of the record of the case of Manuel Rosaly Castillo vs. The People of Porto Rico, No. 840, to recover possession of property.

F. J. AMY, *Translator.*

[Endorsed:] Filed in my Office with copies, on this 20 day of August, 1910. ———, Secretary of the Supreme Court of Porto Rico.

52

In the Supreme Court of Porto Rico.

Law. No. 511.

MANUEL ROSALY CASTILLO, Plaintiff and Appellee,

vs.

THE PEOPLE OF PORTO RICO, Defendant and Appellant.

Citation on Appeal.

UNITED STATES OF AMERICA,

District of Porto Rico, ss:

The President of the United States of America to Manuel Rosaly Castillo and José Tous Soto, his attorney of record:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be held in the City

of Washington, D. C. within sixty days from the date of this Writ, pursuant to an order allowing an appeal filed and entered in the office of the Secretary of the Supreme Court of Porto Rico from the final judgment signed, filed and entered on the 14th day of June, 1910, in that certain action at law, No. 511, wherein the People of Porto Rico is Defendant and Appellant and you are Plaintiff and Appellee, to show cause, if any there be, why the judgment rendered against the said Defendant and Appellant as in said order allowing the appeal mentioned should not be corrected, and why speedy justice should not be done to the Defendant in that behalf.

Witness, the Hon. James H. MacLeary, Associate Judge of the Supreme Court of Porto Rico, at the City of San Juan, Porto Rico, this 24th day of June, in the year of our Lord, 1910.

[Seal Supreme Court of Porto Rico, United States of America.]

J. H. M'LEARY,
Associate Justice Supreme Court of P. R.

Attest:

A. F. CASTRO,
Secretary of the Supreme Court of Porto Rico.

53 Received this writ this 24th day of June 1910 and served the same by sending by registered mail a true copy thereof to the within named Manuel Rosaly Castillo and José Tous Soto at Ponce P. R.

This at San Juan P. R. June 24th 1910.

S. C. BOTHWELL, Marshal

54 SUPREME COURT OF PORTO RICO,
Island of Porto Rico:

I, Antonio F. Castro, Secretary and Reporter of the Supreme Court of Porto Rico, do hereby certify; that the foregoing documents constitute the record in a certain cause lately pending in said Court, wherein Manuel Rosaly y Castillo, is plaintiff and respondent, and the The People of Porto Rico, is defendant and appellant; that of such documents, those which originals appear in the Spanish language, have been truly and faithfully translated into the English language according to the certificate of Mr. F. J. Amy, official translator, which forms a part of these records; and those which have been originally written in the English language, have been truly and faithfully copied.

In witness whereof, I hereunto set my hand and affix the seal of said Supreme Court, at the city of San Juan, Porto Rico, this seventh day of September, in the year of our Lord, one thousand nine hundred and ten.

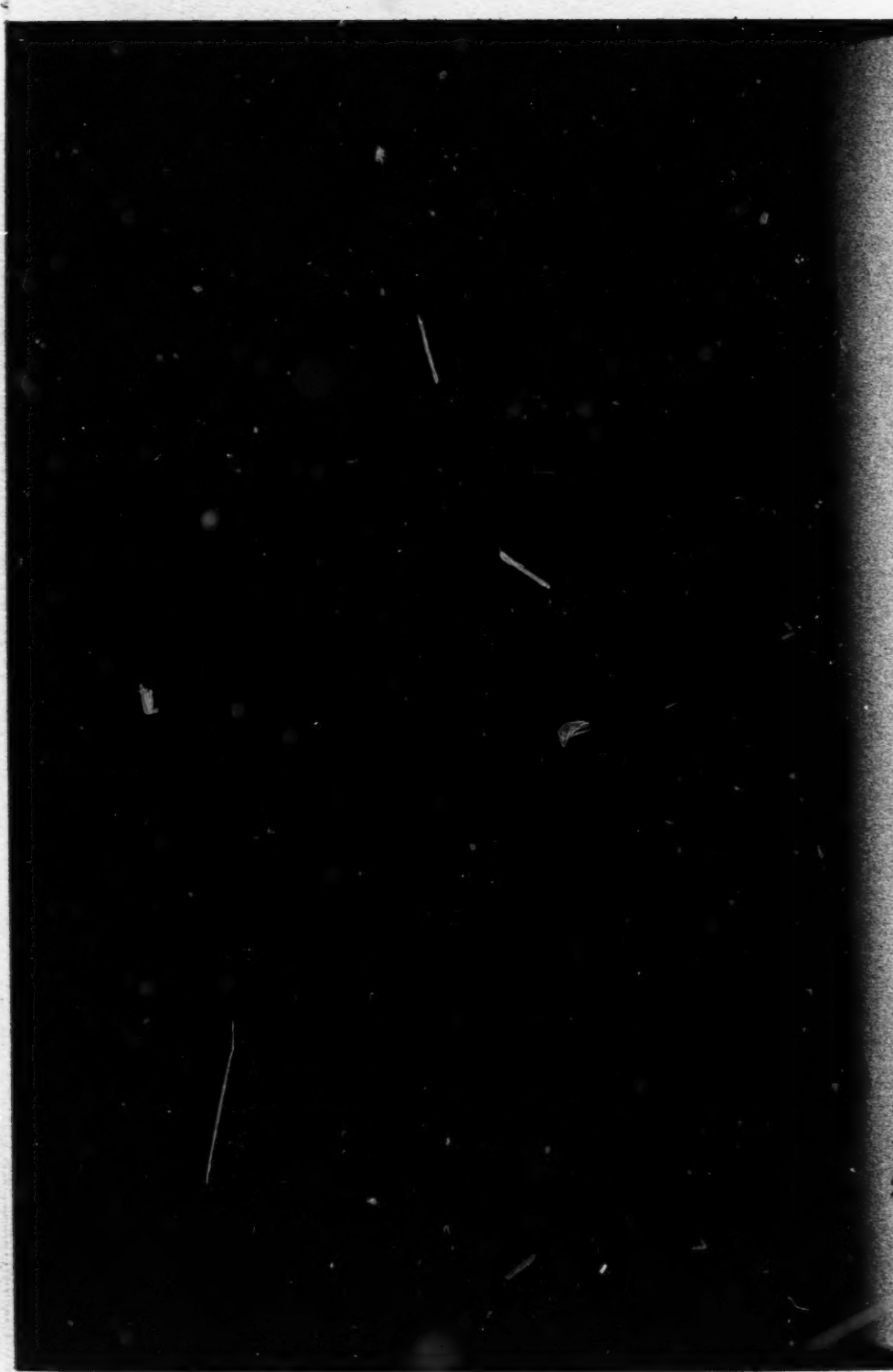
A. F. CASTRO,
Secretary and Reporter of the Supreme
Court of Porto Rico.

Endorsed on cover: File No. 22,339. Porto Rico Supreme Court. Term No. 718. The People of Porto Rico, appellant, vs. Manuel Rosaly y Castillo. Filed October 7th, 1910. File No. 22,339.

d
o
t

e
ts
t,
t,
ut
h
h
e-
ve
d
of
is
d

rt.
el



In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE PEOPLE OF PORTO RICO,

appellants,

v.

MANUEL ROSALY Y CASTILLO,

appellee.

No. 408.

MOTION TO ADVANCE.

This case comes here upon an appeal from a judgment of the Supreme Court of Porto Rico confirming a judgment of one of its district courts sustaining an action of ejectment and damages for mesne profits against Porto Rico.

The single question raised here by the record is this:

Is the body politic known as The People of Porto Rico liable to suit, irrespective of permission given by statutes, which does not extend to this case?

The Supreme Court of the Island has answered this question in the affirmative (though there was a vigorous dissenting opinion); a contrary result has been reached by the Federal District Court of Porto Rico. (*Elkins v. People*, 5 P. R. Fed. Rep., 103; *ibid.*, 243.) In this state of conflict between the Insular

and Federal Courts on a matter of grave importance, a number of suits are pending in both courts, the outcome of which depend upon the final determination of this issue.

For this reason, and in view of the representation by the Attorney General of Porto Rico that the speedy settlement of the controversy is of real importance to the people of Porto Rico, this court is respectfully moved to advance the case on the docket and set it down for hearing during the present term on a day convenient to the court.

We are authorized to say that counsel for the appellee consents to this motion.

FELIX FRANKFURTER,

Law Officer,

Bureau of Insular Affairs.

NOVEMBER, 1911.



In the Supreme Court of the United States.

OCTOBER TERM, 1912.

| | | |
|--|---|----------|
| THE PEOPLE OF PORTO RICO, appellants, v. MANUEL ROSALY Y CASTILLO, appellee. | } | No. 145. |
|--|---|----------|

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

BRIEF FOR APPELLANT.

Statement.

This case comes here upon an appeal from a judgment of the Supreme Court of Porto Rico, affirming a judgment of one of the District Courts of the Island sustaining an action of ejectment and damages for mesne profits, brought against Porto Rico without its consent, and sustained over its resistance (R. 13 to 14, 17). Although an action at law, it was not tried by jury and, therefore, is rightly brought here by appeal, according to the provisions of section 35 of the Act of April 12, 1900, (31 Stat., 85), and section 2 of the Act of April 7, 1874, (18 Stat., 27), (*Garzot v. de Rubio*, 209 U. S., 283, and *Murphy v. Ramsey*, 114 U. S., 15, 35).

The Issue.

The single question (Ass'n. R. 29) raised by the record is this:

Does the body politic known as The People of Porto Rico, by virtue of the government established by its organic act, enjoy exemption from suit without its own permission, which does not extend to this case.

The supreme court of the island has answered this question in the ~~affirmative~~^{negative} (Opinion R. 13 and now reported in 16 P. R. Rep. 481.) The unsoundness of this decision is so clear, in view of the decision of this Court in *Kawananakoa v. Polyblank*, (205 U. S. 349), is so fully shown in the dissenting opinion of Justice MacLeary, (R. 18), the decision of the Federal Court of Porto Rico in *Elkins v. Porto Rico*, (5 Fed. Rep. P. R., 103), and the decision of the Supreme Court of New York in *Richmond v. Porto Rico*, (99 N. Y. Supp. 743), that very little argument is here called for.

Argument.

I.

THE ORGANIC ACT OF PORTO CREATED A SELF-GOVERNING SOVEREIGNTY FOR PURPOSES OF IMMUNITY FROM SUIT WITHOUT CONSENT.

By the Foraker Act of April 12, 1900, (31 Stat. 77, 79), Congress, for all purposes of internal administration, established Porto Rico as an organized territory. As recently declared by this court, "the purpose of the act is to give local self-government, conferring an autonomy similar to that of the states

and territories," (*Gromer v. Standard Dredging Co.*, 224 U. S. 362, 370). Along well established lines of territorial governments, Congress created a definite structure of local administration with full power in the local legislature to make and change the laws of contract and property, subject only to the customary reserve power of Congress as a "protection against abuse," (sections 15 and 32, Act of Congress of April 12, 1900). Only for political reasons has the technical designation of "territory" been withheld by Congress—but every attribute of sovereignty that any of the territories possess has been conferred,¹ (*Kopel v. Bingham*, 211 U. S. 468, 476; *In re Kopel* 148 Fed. Rep. 505, 507).

From the very nature of the Government of Porto Rico thus established by Congress flows the immunity from suit without its consent. It is a right conferred by reason of the governmental powers granted and the responsibilities created by the organic act. This clearly follows from the decision of this Court in *Kawananakoa v. Polyblank* (205 U. S. 349, 353), and the reasons which underlie it:

A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the

¹ Thus far United States citizenship, in name, has been withheld, but the granting of it, in view of the status of Porto Rico has been urged by the Executive and a bill conferring it has passed the House of Representatives and is now before the Senate (see H. R. 20048, 62d Cong., 2d sess.; H. Rep. 341, 62d Cong., 2d sess.; President's message of December 6, 1912, and Annual Report of Secretary of War for 1911, p. 40).

right depends. "*Car on peut bien recevoir loy d'autrui, mais il est impossible par nature de se donner loy.*" (Bodin, *Republique*, 1, c. 8. Ed. 1629, p. 132. Sir John Eliot, *De Jure Maiestatis*, c. 3. *Nemo suo statuto ligatur necessitative.* Baldus., *De Leg. et Const., Digna Vox*, 2d ed., 1496, fol. 51b., Ed. 1539, fol. 61.)

As the ground is thus logical and practical, the doctrine is not confined to powers that are sovereign in the full sense of judicial theory, but naturally is extended to those that in actual administration originate and change at their will the laws of contract and property, from which persons within the jurisdiction derive their rights. A suit presupposes that the defendants are subject to the law invoked. Of course it cannot be maintained unless they are so. But that is not the case with a Territory of the United States, because the Territory itself is the fountain from which rights ordinarily flow. *It is true that Congress might intervene*, just as in the case of a State the Constitution does, and the power that can alter the Constitution might. But the rights that exist are not created by Congress or the Constitution, except to the extent of certain limitations of power. The District of Columbia is different, because there the body of private rights is created and controlled by Congress and not by a legislature of the District. But for the Territory of Hawaii it is enough to refer to the organic act. (Act of April 30, 1900, c. 339, §§ 6, 55; 31 Stat. 141, 142, 150.)

This controls the present case, for there is no difference whatever in the structure of their governments, in the actual exercise of governmental powers, and the relation of independence of the local governments to the National Government, between Hawaii and Porto Rico.

II.

PORTO RICO'S IMMUNITY FROM SUIT, BY VIRTUE OF ITS ORGANIC ACT CREATING A SOVEREIGN BODY POLITIC, WAS NOT LIMITED BY THE SPECIFIC PROVISION CONFERRING UPON THE ISLAND "POWER TO SUE AND BE SUED AS SUCH."

Section 7 of the Foraker Act defines who shall be citizens of Porto Rico, and then provides—

and they, together with such citizens of the United States as may reside in Porto Rico, shall constitute a body politic under the name of The People of Porto Rico, with governmental powers as hereinafter conferred, and with power to sue and be sued as such.

Upon the assumed significance of this last phrase, "power to sue and be sued as such," the majority of the Insular Supreme Court rested their decision. They found in it a blanket authority to sue *ad libitum* the government established by the organic act. This simple phrase is interpreted to establish for Porto Rico not only a Tucker Act (Act of March 3, 1887; 24 Stat. 505), giving specific permission of the sovereign (using the term in the qualified sense as covering the sovereign's immunity here under discussion) to be sued in a definite class of cases and in a manner and subject to the restrictions that it may see fit to im-

pose, (see *Reid v. United States*, 211 U. S. 529, 538), but an unlimited permission, subjecting the sovereign to the same amenability to suit as its individual citizens.

In so holding, the lower court fell into patent error. "Power" was confused with liability. The sole function of the phrase is explicitly to create a legal personality, capacity for litigation, the power to transact business in court, when the sovereign itself invokes the jurisdiction of the court, or when permission to proceed against it is specifically conferred upon the courts.² In a word, such a provision merely confers the attribute of individuality and does not enlarge the jurisdiction of courts. This, in effect, was the decision of Chief Justice Marshall in *Bank v. Deveau* (5 Cranch, 61, 85-86):

This power [to sue and be sued], if not incident to a corporation, is conferred by every incorporating act, and is not understood to enlarge the jurisdiction of any particular court, but to give a capacity to the corporation to appear, as a corporation, in any court which would, by law, have cognisance of the cause, if brought by individuals.

This phrase, in fact, is a bit of congressional redundancy, a denotative description of one of the attributes of sovereignty that would flow as a matter of course. Section 7 merely labeled the sovereignty created by the whole scope of the Foraker Act, and

² Such consent has in fact been granted by the Porto Rican Legislature in certain cases not here applicable (sec. 404, Political Code of Porto Rico, and sub-sec. 5 of sec. 1804 of the Civil Code, in connection with sec. 80 of the Code of Civil Procedure).

did not impair the sovereignty created by the rest of that act.

The legislative history of the provision makes this clear beyond peradventure. The specific purpose of its author was merely to confer upon Porto Rico jurisdiction coextensive with that of the Territories, and not to extend the jurisdiction of its own courts against the sovereignty of Porto Rico. The provision, as originally proposed, read "to sue and be sued in the courts of the United States, in all cases in which such courts have jurisdiction, where one of the parties is a State or Territory of the United States." This was amended to its present form, "with power to sue and be sued as such." Senator Foraker's explanation for the reason of the original provision indisputably supports the interpretation here placed upon the amended and retained provision:

I was having in mind when I drafted the bill the constitutional provision as to the right of a State suing in the Supreme Court of the United States; but when I came to look at it, I discovered what I ought to have known without looking, that Territories are not empowered to sue at all. The provision is only with respect to the Supreme Court. *I thought the entire purpose was subserved by simply giving them power to sue and be sued as a body politic; and then it would be a question of jurisdiction. They can sue in any court that has jurisdiction of the subject matter.* (33 Cong. Rec., Part IV, 3037-3038; italics ours.)

That no provision similar to the one here under discussion is contained in the organic act of Hawaii, passed at the same session of Congress, is wholly without significance, when due regard is given to the actual conditions of Congressional draftsmanship. The two acts issued from two different committees, and were actually drawn by different sets of legislators.* Instances, such as this case discloses, of the lack of uniformity in similar enactments and general want of scientific draftsmanship, are bound to present themselves until a permanent legislative drafting bureau, similar to the English system, will be established by Congress.

Conclusion.

It is respectfully submitted that the judgment of the lower court should be reversed, with instructions to the District Court of Ponce to dismiss the case for want of jurisdiction.

FELIX FRANKFURTER,
Law Officer,
Bureau of Insular Affairs.

WOLCOTT H. PITKIN, Jr.,
Attorney General of Porto Rico.

JANUARY, 1913.

* The Hawaiian Act came from the Senate Committee on Foreign Relations and the House Committee on Territories (H. Rep. No. 549, 56th Cong., 1st Sess.); and the Foraker Act came from the Senate Committee on Pacific Islands and Porto Rico and the House Committee on Ways and Means (S. Rept. No. 249, 56th Cong., 1st Sess., and 33 Cong. Rec., Part III, p. 3437-3438, Part V, p. 3975, 56th Cong., 1st Sess.).

PEOPLE OF PORTO RICO v. ROSALY Y CASTILLO.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

No. 145. Submitted January 24, 1913.—Decided February 24, 1913.

The government of Porto Rico cannot be sued without its consent.

The government of Porto Rico, as established by the Organic Act, with some possible exceptions, comes within the general rule exempting a government sovereign in its attributes.

That government of Porto Rico, as established by the Organic Act of April 12, 1900, is a strong likeness of that established for Hawaii which has immunity from suit. *Kahelelanakoa v. Polyblank*, 205 U. S. 349.

The provision in § 7 of the Organic Act of Porto Rico that the people of Porto Rico shall have power to sue and be sued is not to be construed as destroying the grant of sovereignty given by the act itself. Like words may have one significance in one context and a different signification in another.

In construing an organic act of a Territory this court will consider that Congress intended to create a government conforming to the American system of divided powers—legislative, executive and judicial—and did not intend to give to any one branch of that government power by which the government itself so created could be destroyed.

The words "to sue and be sued" as used in § 7 of the Organic Act of Porto Rico, when construed in connection with the grant of governmental powers therein contained, amount only to a recognition of a liability to be sued in case of consent duly given.

16 Porto Rico, 481, reversed.

227 U. S.

Argument for Appellants.

THE facts, which involve the construction of § 7 of the Organic Act of Porto Rico and whether the Government of that Island can be sued without its consent, are stated in the opinion.

Mr. Felix Frankfurter and Mr. Wolcott H. Pitkin, Jr., Attorney General of Porto Rico, for appellants:

Although this is an action at law, as it was not tried by jury it is rightly brought here by appeal, according to the provisions of § 35 of the act of April 12, 1900, 31 Stat. 85, and § 2 of the act of April 7, 1874, 18 Stat. 27. *Garsot v. de Rubio*, 209 U. S. 283; *Murphy v. Ramsey*, 114 U. S. 15, 35.

The body politic known as The People of Porto Rico, by virtue of the government established by its Organic Act, enjoys exemption from suit without its own permission, which extends to this case. *Elkins v. Porto Rico*, 5 P. R. Fed. Rep. 103; *Richmond v. Porto Rico*, 99 N. Y. Supp. 743.

Kauananakoa v. Polyblank, 205 U. S. 319, controls this case, for there is no difference whatever in the structure of their governments, in the actual exercise of governmental powers, and the relation of independence of the local governments to the National Government, between Hawaii and Porto Rico.

The Organic Act of Porto Rico created a self-governing sovereignty for purposes of immunity from suit without consent.

The purpose of the act is to give local self-government, conferring an autonomy similar to that of the States and Territories. *Gromer v. Standard Dredging Co.*, 224 U. S. 382, 370.

Only for political reasons has the technical designation of "Territory" been withheld by Congress—but every attribute of sovereignty that any of the Territories possess has been conferred. *Kopel v. Bingham*, 211 U. S. 468, 476; *In re Kopel*, 148 Fed. Rep. 505, 507.

Thus far United States citizenship, in name, has been withheld, but the granting of it, in view of the status of Porto Rico has been urged by the Executive and a bill conferring it has passed the House of Representatives and is now before the Senate (see H. Rep. 20048, 62d Cong., 2d sess.; H. Rep. 341, 62d Cong., 2d sess.; President's message of December 6, 1912, and Annual Report of Secretary of War for 1911, p. 40).

Porto Rico's immunity from suit, by virtue of its Organic Act creating a sovereign body politic, was not limited by the specific provision conferring upon the Island "power to sue and be sued as such." Section 7 of the Foraker Act does not amount to a blanket authority to sue *ad libitum* the government established by the Organic Act. Nor is it for Porto Rico not only a Tucker Act of March 3, 1887, 24 Stat. 505, giving specific permission of the sovereign (using the term in the qualified sense as covering the sovereign's immunity here under discussion) to be sued in a definite class of cases and in a manner and subject to the restrictions that it may see fit to impose (see *Reid v. United States*, 211 U. S. 529, 538), but an unlimited permission, subjecting the sovereign to the same amenability to suit as its individual citizens.

The provision merely confers the attribute of individuality and does not enlarge the jurisdiction of courts. *Bank v. Deveau*, 5 Cranch, 61, 85-86.

Section 7 merely labeled the sovereignty created by the whole scope of the Foraker Act, and did not impair the sovereignty created by the rest of that act.

Consent to be sued has been granted by the Porto Rican legislature in certain cases not here applicable (§ 404, Political Code of Porto Rico, and sub-sec. 5 of § 1804 of the Civil Code, in connection with § 80 of the Code of Civil Procedure.

No appearance for appellee.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

The appellee was plaintiff in the first instance. The defendants were The People of Porto Rico (the Government of the Island) and several named individuals. Recovery was sought of property in possession of the defendants and for rents and profits. The individual defendants defaulted. The Government defended and from a judgment ousting it from the property and for rents and profits appealed to the Supreme Court. The court, giving its reasons for affirmance, thus stated the only issue presented and which was decided: "The appeal was taken by The People of Porto Rico, and the only ground alleged in support thereof was that, inasmuch as The People of Porto Rico could not be sued without its consent, and such consent not appearing to have been given in this case, the District Court had acted without jurisdiction, and the judgment rendered by it was null and void." The court did not overlook the importance of the question, as is shown by its careful and perspicuous opinion. A member of the court fully stated his reasons for dissenting. On this appeal, taken by The People of Porto Rico, the case having been tried without a jury, the question for decision is narrower than would seem to be the case regarding alone the general terms in which the question is mentioned in the passage previously quoted from the opinion of the court below.

It is not open to controversy that aside from the existence of some exception the government which the organic act established in Porto Rico is of such nature as to come within the general rule exempting a government sovereign in its attributes from being sued without its consent. In the first place, this is true because in a general sense so far as concerns the frame work of the Porto Rican government and the legislative, judicial and executive authority with which it is endowed there is, if not a com-

plete identity, at least in all essential matters, a strong likeness to the powers usually given to organized Territories and moreover a striking similarity to the Organic Act of the Hawaiian Islands (Act of April 30, 1900, chap. 339, §§ 6, 55; 31 Stat. 141, 142 and 150). But as the incorporated Territories have always been held to possess an immunity from suit and as it has been moreover settled that the government created for Hawaii is of such a character as to give it immunity from suit without its consent, it follows that this is also the case as to Porto Rico. *Kawanakoa v. Polyblank*, 205 U. S. 349, 353. This, moreover, is additionally beyond question because in considering the nature and character of the government of Porto Rico in *Kopel v. Bingham*, 211 U. S. 468, it was said (p. 476): "It may be justly asserted that Porto Rico is a completely organized Territory, although not a Territory incorporated into the United States, and that there is no reason why Porto Rico should not be held to be such a Territory. . . ." Besides, in *Gromer v. Standard Dredging Company*, 224 U. S. 362, in considering the subject and giving due weight to "the precaution against abuse" of the Porto Rican legislative power and after calling attention to the reservation made by Congress of the right to repeal any Porto Rican act of legislation, it was nevertheless declared (p. 370): "The purpose of the act is to give local self-government, conferring an autonomy similar to that of the States. . . ." There being, then, no doubt that immunity from suit without its consent is necessarily inferable from a mere consideration of the nature of the Porto Rican government, the issue is whether there is any ground which removes Porto Rico from the general rule. That such an exception is the result of the concluding portion of § 7 of the Organic Act was the sole basis upon which the court below rested its conclusion and the correctness of that view is the only issue we are called upon to decide.

The section in question, § 7, is the one which enumerates the classes of persons who by the act are made constituent elements of the government for which the act provides, and after making such enumeration the section declares that the persons embraced in its provisions "shall constitute a body politic under the name of The People of Porto Rico with governmental powers as hereinafter conferred and with power to sue and be sued as such."

Unquestionably the provision disconnected from its context would sustain the conclusion that there exists a general liability to be sued without reference to consent. Indeed, the words to sue and be sued are but a crystallized form of expression resorted to for the purpose of aptly stating the right to sue and the liability to be sued, which springs from a grant of corporate existence, private or public. But this does not solve the question here arising, which is the meaning of the words in the act under consideration, for it may be that like words may have one significance in one context and a different signification in another. And this is made clear by bearing in mind that as usually applied the words to sue and be sued but express implications as to the existence of powers flowing from the matter to which they relate, while here if the words have the meaning insisted on they serve, if not to destroy, at least to seriously modify or greatly restrict the grant of powers conferred by the organic act. The destructive potency of the words if given the meaning insisted upon is self-evident, since the claim here is that they denature the government created by the organic act by depriving it of an immunity which has been frequently decided by this court would otherwise necessarily arise from the scope of the powers conferred. As, however, a full appreciation of the operation of the words, if they are interpreted as insisted upon, affords the truest means of ascertaining their real signification, we do not rest content with that which is self-evident, but pursue the subject further.

The proposition is that by giving to the words the meaning insisted upon it has come to pass that the existence of claims of every kind and nature, whether in contract or in tort against the government, is a matter for exclusive judicial determination. But as the essence of paramount judicial power over a subject confers the authority and imposes the duty to enforce a judgment rendered in the exercise of such power (*Gordon v. United States*, 117 U. S. 697, 702; *La Abra Silver Mining Co. v. United States*, 175 U. S. 423, 457; *District of Columbia v. Eslin*, 183 U. S. 62, 65), it follows that the contention is that the government created by the Organic Act is not the character of government which this court has declared it to be in the cases to which we have referred, that is, one founded upon the American system, but is, on the contrary, one in which the legislative power concerning claims of every kind against the government is subordinated to the judicial. That such was the view taken by the court below of the result of the meaning which it affixed to the clause in question was plainly stated in the opinion as follows (16 Porto Rico, 487):

"The presence of the words 'with power to sue and be sued,' in our Organic Act, cannot be ascribed to an oversight of Congress, but, on the contrary, it may be presumed that Congress employed them having in mind the obligations contracted in the Treaty of Paris, and with the desire of giving to the persons included in its stipulations ready access to courts of justice, against any invasion of their rights by governmental action. And indeed, there should be no fear of entrusting to the courts the protection, not only of the persons mentioned in the treaty, but of any other persons, without excluding The People of Porto Rico. This has been demonstrated sufficiently by an experience of more than ten years."

In view, however, of the terms of the Organic Act, of the prior decisions recognizing that the purpose of Con-

227 U.S.

Opinion of the Court.

gress in adopting it was to follow the plan applied from the beginning to the organized Territories by creating a government conforming to the American system with defined and divided powers, legislative, executive and judicial, in further view of the fact that the exercise of the judicial power here claimed would be destructive of that system, we are of opinion that it cannot be supposed that Congress intended by the clause in question to destroy the government which it was its purpose to create. In a sense the words "to sue and be sued," applied, as they normally have been, in grants of private or public charters, are redundant, since they but express the existence of powers which would naturally be implied. It may be true also to say that if they be likewise confined in the case before us they will also be in a sense redundant. Despite this, we think they should be construed with reference to the powers conferred by the provisions to which they relate, and therefore cannot be treated as destructive of the authority otherwise conferred by the act. Thus interpreting the clause, it is but an expression of the power to sue arising from the terms of the Organic Act and a recognition of a liability to be sued consistently with the nature and character of the government, that is, only in case of consent duly given. The words, "shall have the governmental powers hereinafter conferred and with the power to sue," etc., exclude the possibility in reason of holding that the right to sue and be sued which was given "and with," that is, because of or along with the powers conferred—was intended to or does distort or limit the powers of government which the act conferred.

Reversed.